IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:17-cv-172

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ASSOCIATED ELECTRIC & GAS INSURANCE SERVICES LIMITED

Plaintiff,

vs.

DUKE ENERGY CORPORATION, DUKE ENERGY CAROLINAS, LLC f/k/a DUKE POWER COMPANY, and DUKE ENERGY PROGRESS, LLC f/k/a CAROLINA POWER & LIGHT COMPANY

Defendants.

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COMPLAINT FOR DECLARATORY RELIEF

Plaintiff, Associated Electric & Gas Insurance Services Limited ("AEGIS"), as and for its complaint for declaratory judgment against defendants, Duke Energy Corporation, Duke Energy Carolinas, LLC f/k/a Duke Power Company, and Duke Energy Progress, LLC f/k/a Carolina Power & Light Company, alleges as follows:

PARTIES

1. Plaintiff, AEGIS, is a Bermuda corporation with its principal office located in Hamilton, Bermuda.

2. AEGIS receives professional staff and services from AEGIS Insurance Services, Inc.

3. AEGIS Insurance Services, Inc. is a wholly-owned subsidiary of AEGIS.

4. The principal place of business of AEGIS Insurance Services, Inc. is in New Jersey.

5. Upon information and belief, Defendant, Duke Energy Corporation ("Duke Energy"), is a Delaware corporation.

6. Upon information and belief, the principal place of business of Duke Energy is in Charlotte, North Carolina.

7. Upon information and belief, Defendant, Duke Energy Carolinas, LLC, is a North Carolina limited liability company. None of the members of Defendant Duke Energy Carolinas, LLC is a citizen of the state of New Jersey or a citizen or subject of a foreign state. All of the limited liability company member interests in Duke Energy Carolinas, LLC are directly owned by Duke Energy Corporation.

8. Upon information and belief, the principal place of business of Duke Energy Carolinas, LLC is in Charlotte, North Carolina.

9. Upon information and belief, Duke Energy Carolinas, LLC is the successor to Duke Power Company ("Duke Power").

10. Upon information and belief, Defendant, Duke Energy Progress, LLC, is a North Carolina limited liability company. Upon information and belief, none of the members of Defendant Duke Energy Progress, LLC is a citizen of the state of New Jersey or a citizen or subject of a foreign state. Upon information and belief, all of the limited liability company member interests in Duke Energy Progress, LLC are directly owned either by Duke Energy Corporation or Progress Energy, Inc. Upon information and belief, Progress Energy, Inc. is a North Carolina Corporation with its principal place of business in Raleigh, North Carolina.

11. Upon information and belief, the principal place of business of Duke Energy Progress, LLC is in Raleigh, North Carolina.

12. Upon information and belief, Duke Energy Progress, LLC is the successor to Carolina Power & Light Company ("CP&L").

JURISDICTION AND VENUE

13. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1332 and 2201.

14. If AEGIS is viewed as a citizen of Bermuda, this is an action between citizens of a state and a citizen of a foreign state within the meaning of 28 U.S.C. § 1332(a)(2). Alternatively, if AEGIS is viewed as a citizen of New Jersey, this is an action between citizens of different states within the meaning of 28 U.S.C. § 1332(a)(1).

15. AEGIS, Duke Energy Corporation, Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, are interested parties within the meaning of 28 U.S.C. §2201.

16. The amount in controversy exceeds the sum and value of $75,000, exclusive of interest and costs.

17. Venue is proper in this Court pursuant to 28 U.S.C § 1391(b), (c) and (d).

18. This is an action for declaratory judgment pursuant to 28 U.S.C. §§ 2201 for the purpose of determining a question of actual controversy between the parties as will be described more completely in this Complaint.

GENERAL ALLEGATIONS

Duke Power's Insurance Policies

19. This action involves policies issued to Duke Power from 1979 to 1985.

20. Policies issued to Duke Power are listed below:

Insured	Insurer	Policy Number	Policy Period
Duke Power Co.	AEGIS	172	12/31/79 to 12/31/80
Duke Power Co.	American Centennial Insurance Company	CC-00-12-63	12/31/79 to 12/31/80
Duke Power Co.	American Centennial Insurance Company	CC-00-26-11	10/31/81 to 10/31/83
Duke Power Co.	Ranger Insurance Company	BSP 122047	10/31/81 to 10/31/83
Duke Power Co.	Ranger Insurance Company	EUL 300658	10/31/83 to 10/31/84
Duke Power Co.	Ranger Insurance Company	EUL 300579	10/31/84 to 10/31/85
Duke Power Co.	AEGIS	209CNJ	10/31/85 to 10/31/86

21. All of the policies listed in paragraph 20 were delivered to Duke Power at its headquarters in Charlotte, North Carolina.

22. Policies CC-00-12-63, CC-00-26-11, BSP 122047, EUL 300658, and EUL 300579 are fronting policies.

23. The policies listed in paragraph 22 were subject to 100% reinsurance from AEGIS.

24. Duke Power at all times dealt with AEGIS about claims under the policies listed in paragraph 20.

25. Duke Power did not deal with American Centennial Insurance Company or Ranger Insurance Company about claims under the policies listed in paragraph 20.

26. AEGIS, including its wholly owned subsidiary, AEGIS Insurance Services, Inc., had actual authority to accept notice, administer claims, and pay claims under the policies listed in paragraph 20.

27. Duke Power understood that AEGIS, including its wholly owned subsidiary, AEGIS Insurance Services, Inc., had actual authority to accept notice, administer claims, and pay claims under the policies listed in paragraph 20.

28. AEGIS has been authorized by American Centennial Insurance Company and Ranger Insurance Company to handle the claims that are the subject of this action.

29. AEGIS is the real party in interest with respect to the policies listed in paragraph 20.

CP&L's Insurance Policies

30. This action involves policies issued to CP&L from 1981 to 1985.

31. Policies issued to CP&L are listed below:

Insured	Insurer	Policy Number	Policy Period
Carolina Power & Light	American Centennial	CC-00-26-13	10/31/81 to 10/31/83
Carolina Power & Light	Ranger Insurance Company	BSP 122048	10/31/81 to 10/31/83
Carolina Power & Light	Ranger Insurance Company	EUL 300659	10/31/83 to 10/31/84
Carolina Power & Light	Ranger Insurance Company	EUL 300578	10/31/84 to 10/31/85
Carolina Power & Light	AEGIS	211CNJ	10/31/85 to 10/31/86

32. All of the policies listed in paragraph 31 were delivered to CP&L at its headquarters in Raleigh, North Carolina.

33. Policies CC-00-26-13, BSP 122048, EUL 300659, and EUL 300578 are fronting policies.

34. The policies listed in paragraph 33 were subject to 100% reinsurance from AEGIS.

35. CP&L at all times dealt with AEGIS about claims under the policies listed in paragraph 31.

36. CP&L did not deal with American Centennial Insurance Company or Ranger Insurance Company about claims under the policies listed in paragraph 31.

37. AEGIS, including its wholly owned subsidiary, AEGIS Insurance Services, Inc., had actual authority to accept notice, administer claims, and pay claims under the policies listed in paragraph 31.

38. CP&L understood that AEGIS, including its wholly owned subsidiary, AEGIS Insurance Services, Inc., had actual authority to accept notice, administer claims, and pay claims under the policies listed in paragraph 31.

39. AEGIS has been authorized by American Centennial Insurance Company and Ranger Insurance Company to handle the claims that are the subject of this action.

40. AEGIS is the real party in interest with respect to the policies listed in paragraph 31.

Operations of Duke Power and CP&L

41. Since at least the 1920s, Duke Power and CP&L, and their successors, have operated power plants in North Carolina and South Carolina.

42. Some of the power plants described in paragraph 41 burned coal to generate electricity.

43. Burning coal creates coal combustion residuals (“CCRs”).

44. Upon information and belief, Duke Power and CP&L placed CCRs in impoundments, landfills, and other areas at their power plants.

Duke Power’s 1996 CCR Claim

45. On or about November 20, 1996, Duke Power notified AEGIS that AEGIS was, or could be, responsible for liabilities arising from CCRs.

46. Duke Power said that its CCR liabilities arose from the Duke Power Ash Sites, as listed below:

Allen Coal-Fired Power Plant

Belews Creek Coal-Fired Power Plant

Buck Coal-Fired Power Plant

Cliffside Coal-Fired Power Plant

Dan River Coal-Fired Power Plant

Marshall Coal-Fired Power Plant

Riverbend Coal-Fired Power Plant

H.F. Lee Coal-Fired Power Plant

47. In 1996, Duke Power and AEGIS entered into a Standstill Agreement (the "Duke Power Standstill Agreement").

48. The Duke Power Standstill Agreement became effective on or about September 17, 1996 and was to remain in effect for 180 days.

49. The Duke Power Standstill Agreement tolled all statutes of limitation while the agreement was in effect.

50. The Duke Power Standstill Agreement provided that "[i]mmediately upon cancellation or expiration of this Agreement, all limitations and laches periods will resume, excepting only that the Standstill Period will be excluded and omitted from any calculations of time periods or periods of alleged delay."

51. The Duke Power Standstill Agreement was extended several times by the parties through January 31, 2001.

52. After January 31, 2001, there were no further extensions to the Duke Power Standstill Agreement.

53. In or around 1996, Duke Power estimated its costs to address CCRs at the sites identified in paragraph 46.

54. While the Duke Power Standstill Agreement was in effect, Duke Power demanded that AEGIS pay a substantial amount of money for its CCR liabilities.

55. AEGIS and Duke Power never reached an agreement about CCR liabilities.

56. AEGIS denied Duke Power's claims for CCR liabilities.

57. AEGIS never paid money for Duke Power's claims.

58. The Duke Power Standstill Agreement terminated on January 31, 2001, and the statute of limitations resumed running the next day.

CP&L's 1996 CCR Claim

59. On or about August 8, 1996, CP&L notified AEGIS that AEGIS was, or could be, responsible for liabilities arising from CCRs.

60. CP&L said that its CCR liabilities arose from the following sites:

Cape Fear Ash Ponds

Robinson Ash Ponds

Roxboro Ash Management Areas

Sutton Ash Ponds

Weatherspoon Ash Ponds

W.S. Lee Ash Ponds

61. In 1996, CP&L and AEGIS entered into a Standstill Agreement concerning CP&L's CCR liabilities (the "First CP&L Standstill Agreement").

62. The First CP&L Standstill Agreement became effective on or about August 22, 1996 and was to remain in effect for 180 days.

63. The First CP&L Standstill Agreement tolled all statutes of limitation while the agreement was in effect.

64. The First CP&L Standstill Agreement provided that "[i]mmediately upon cancellation or expiration of this Agreement, all limitations and laches periods will resume, excepting only that the Standstill Period will be excluded and omitted from any calculations of time periods or periods of alleged delay."

65. The parties extended the First CP&L Standstill Agreement through November 30, 2001.

66. After November 30, 2001, there were no further extensions to the First CP&L Standstill Agreement.

67. In or around 1996, CP&L estimated its costs to address CCRs at the sites identified in paragraph 60.

68. While the First CP&L Standstill Agreement was in effect, CP&L demanded that AEGIS pay a substantial amount of money for its CCR liabilities.

69. In 2002, CP&L expanded the negotiations to include two other CCR sites, Mayo and Asheville.

70. AEGIS and CP&L never reached an agreement about CCR liabilities.

71. AEGIS denied CP&L's claims for CCR liabilities.

72. AEGIS never paid money for CP&L's CCR claims.

73. Through a letter dated February 26, 2011, CP&L tried to renew its claim for the eight sites described in paragraphs 60 and 69.

74. AEGIS and CP&L entered into a new Standstill and Confidentiality Agreement concerning CP&L's CCR liabilities (the "Second CP&L Standstill and Confidentiality Agreement").

75. The Second CP&L Standstill and Confidentiality Agreement became effective June 16, 2011 and was to remain in effect for 180 days.

76. The Second CP&L Standstill and Confidentiality Agreement pertained to CP&L's CCR liabilities arising from the CP&L Ash Sites, as listed below:

Asheville Steam Plant Ash Ponds

Cape Fear Ash Ponds

Mayo Ash Ponds

Robinson Ash Ponds

Roxboro Ash Ponds

Sutton Ash Ponds

Weatherspoon Ash Ponds

W.S. Lee Ash Ponds

77. The Second CP&L Standstill and Confidentiality Agreement tolled all statutes of limitation.

78. The Second CP&L Standstill and Confidentiality Agreement provided that "[i]mmediately upon cancellation or expiration of this Agreement, all limitations and laches periods will resume, excepting only that the Standstill Period will be excluded and omitted from any calculations of time periods or periods of alleged delay."

79. The Second CP&L Standstill and Confidentiality Agreement further provided that "[d]uring the Standstill Period, no substantive or procedural rights or duties of the Policyholder

or AEGIS will change [and] that neither the Policyholder nor AEGIS shall legally benefit in any way or be prejudiced in any way during the Standstill Period or from the fact of entering into this Agreement."

80. In or around 2011, CP&L estimated its costs to address CCRs at the sites identified in paragraph 76.

81. In a letter dated July 29, 2011, CP&L again demanded that AEGIS pay substantial amounts of money to resolve CP&L's CCR claims.

82. In a letter dated September 29, 2011, AEGIS again denied coverage for CP&L's CCR claims.

83. In a letter dated October 25, 2011, CP&L requested that AEGIS reconsider its denial.

84. In a letter dated November 16, 2011, AEGIS informed CP&L that AEGIS's position remained unchanged.

85. In AEGIS's November 16, 2011 letter, AEGIS informed CP&L that "coverage is not available" for CP&L's CCR claims.

86. On or about January 16, 2012, the Second CP&L Standstill and Confidentiality Agreement terminated.

87. On or about January 17, 2012, the statute of limitations on CP&L's CCR claims, if not already expired, resumed running.

Duke's 2016 CCR Notice

88. In a letter dated August 29, 2016, Duke Energy again notified AEGIS about Duke's CCR liabilities.

89. Duke Energy's August 29, 2016 letter addressed the same Duke Power and CP&L sites in North Carolina and South Carolina as were addressed in the earlier claims.

90. Duke Energy contends that its costs to remediate alleged third-party property damage arising from CCRs either exceed the retentions or limits underlying the AEGIS policies, or threaten to do so.

91. Duke Energy's Form 10-K Report filed with the Securities & Exchange Commission on February 24, 2017 indicates Duke Energy Carolinas, LLC has recorded a liability for CCRs of $2.032 billion and that Duke Energy Progress, LLC has recorded a liability for CCRs of $2.209 billion.

92. Duke Energy notified AEGIS that coverage may be owed to Duke Energy under the terms of the policies, issued before 1987, by or on behalf of AEGIS to Duke Power and CP&L.

FIRST CLAIM FOR RELIEF – STATUTE OF LIMITATIONS
(Concerning the Duke Power Ash Sites)

93. Paragraphs 1 through 92 are repeated and realleged as if fully set forth again.

94. Duke Energy seeks coverage from AEGIS for CCR-related liabilities arising from the same sites for which Duke Power had sought coverage from AEGIS for CCR-related liabilities in the 1990s, the Duke Power Ash Sites.

95. Duke Energy seeks coverage under the same policies under which Duke Power sought coverage in the 1990s.

96. AEGIS did not pay Duke Power's CCR claims in the 1990s.

97. North Carolina General Statutes Section 1-52 provides that an action upon a contract, obligation or liability arising out of a contract, express or implied, must be commenced within three years.

98. The limitations period in North Carolina General Statutes Section 1-52 begins to run on a contract claim when the right to institute and maintain a suit arises.

99. Duke Power's right to institute and maintain a suit with respect to its CCR liabilities arising from the Duke Power Ash Sites accrued when AEGIS first denied payment of Duke Power's claim in 1996, and Duke Power was free to commence that suit no later than November 1, 2000, the day after the Duke Power Standstill Agreement terminated.

100. More than three years have elapsed since Duke Power's right to institute and maintain suit against AEGIS for coverage for its CCR liabilities arising from the Duke Power Ash Sites accrued.

101. The statute of limitations on Duke Power's claim against AEGIS for coverage for CCR liabilities arising from the Duke Power Ash Sites has expired.

102. AEGIS is entitled to a declaratory judgment pursuant to 28 U.S.C. § 2201 that Duke Energy's claim for coverage for its CCR liabilities arising from the Duke Power Ash Sites is barred by the statute of limitations.

SECOND CLAIM FOR RELIEF – STATUTE OF LIMITATIONS
(Concerning the CP&L Ash Sites)

103. Paragraphs 1 through 102 are repeated and realleged as if fully set forth again.

104. Duke seeks coverage from AEGIS for CCR-related liabilities arising from the same sites for which CP&L had sought coverage from AEGIS for CCR-related liabilities in the 1990s, the CP&L Ash Sites.

105. Duke seeks coverage under the same policies under which CP&L sought coverage in the 1990s.

106. AEGIS did not pay CP&L's CCR claims in the 1990s.

107. North Carolina General Statutes Section 1-52 provides that an action upon a contract, obligation or liability arising out of a contract, express or implied, must be commenced within three years.

108. The limitations period in North Carolina General Statutes Section 1-52 begins to run on a contract claim when the right to institute and maintain a suit arises.

109. CP&L's right to institute and maintain a suit with respect to its CCR liabilities arising from the CP&L Ash Sites accrued when AEGIS denied payment of CP&L's claim in 1996, and CP&L was free to commence that suit no later than January 17, 2012, the day after the Second CP&L Standstill and Confidentiality Agreement terminated.

110. More than three years have elapsed since CP&L's right to institute and maintain suit against AEGIS for coverage for its CCR liabilities arising from the CP&L Ash Sites accrued.

111. The statute of limitations on Duke Energy's claim against AEGIS for coverage for CCR liabilities arising from the CP&L Ash Sites has expired.

112. AEGIS is entitled to a declaratory judgment pursuant to 28 U.S.C. § 2201 that Duke Energy's claim for coverage for its CCR liabilities arising from the CP&L Ash Sites is barred by the statute of limitations.

WHEREFORE, plaintiff, AEGIS, requests that the Court enter an Order:

A. Declaring that Duke Energy's claim for coverage from AEGIS for its CCR liabilities arising from the Duke Power Ash Sites is barred by the statute of limitations; and

B. Declaring that Duke Energy's claim for coverage from AEGIS for its CCR liabilities arising from the CP&L Ash Sites is barred by the statute of limitations.

This the 29th day of March, 2017

GOLDBERG SEGALLA, LLP

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